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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,121	10/31/2000	Kasim Selcuk Candan	073303.0116	8771

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EXAMINER
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HALIM, SAHERA

ART UNIT	PAPER NUMBER
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2157

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DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

APL

# Office Action Summary

Application No.

09/703,121

Applicant(s)

CANDAN ET AL.

Examiner

Sahera Halim

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-33 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This communication is in response to the communication filled on October 31, 2000.

### Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15, 17-33, are drawn to a content delivery system comprising servers, customers, geographic locations, server and network delays, priority value for customer load capacity of servers and a method for distributing server loads, the method comprising representing an average prioritized observed response time as AORT... and generating a mapping that assigns requests from customers to a particular server while minimizing AORT, classified in **class 709, subclass 203**.
  - II. Claim 16, is drawn to a method for estimating a pre-byte network delay observed by a requesting entity in a geographic location while retrieving data from a server using TCP logs the method comprising computing round trip and determining the per-byte network delay using the computed round-trip, classified in **class 709, subclass 233**.

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3. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, representing an average prioritized observed response time as AORT... and generating a mapping that assigns requests from customers to a particular server while minimizing AORT, classified in a *different Class/ Subclass*. And invention II has separate utility such as estimating a pre-byte network delay observed by a requesting entity in a geographic location while retrieving data from a server using TCP logs the method comprising computing round trip and determining the per-byte network delay using the computed round-trip, classified in a *different Class/Subclass*. See MPEP § 806.05(d).

4. The inventions are distinct, each from the other because of the following reasons:

(a) These inventions have acquired a separate status in the art as shown by their different classifications.

(b) The search required for each Group is different and not co-extensive for examination purposes.

For example, the searches for the two inventions would not be co-extensive because these Groups would require different searches on PTO's classification class and subclass as following:

The Group I search (claims 1-15, and 17-33) would require use of search **Class 709, subclass 203** (not require for invention II).

The Group II search (claim 16) would require use of search **Class 709, subclass 233** (not require for the invention I).

For the reasons given above restriction for examination purposes as indicated is proper.

5. A telephone call was made to Mr. Glenn M. Kubota (Reg. No. 44,197) on June 14, 2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

17. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

18. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sahera Halim whose telephone number is (703) 305-8054. The examiner can normally be reached on M-F from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703) 308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sahera Halim  
Patent Examiner  
AU: 2157

June 14, 2004

  
ARIO ETIENNE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100